5-29-2020

Dwaine Hines v. Vulcan Tools Co

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2344

DWAINE HINES,
Appellant

v.

VULCAN TOOLS COMPANY

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 2-16-cv-09474)
District Judge: Honorable Jose L. Linares

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
April 2, 2020

Before: GREENAWAY, JR., PORTER, and MATEY, *Circuit Judges*.

(Filed: May 29, 2020)

OPINION[*]

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[*] This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

MATEY, *Circuit Judge*.

Dwaine Hines appeals from the District Court's order granting summary judgment for Vulcan Tools Company. For the reasons below, we will affirm.

I. BACKGROUND

Vulcan manufactures components for various industries, and Hines joined the company in 2011. Each December, Vulcan temporarily shuts down its operations. Vulcan employees with at least five years' service are eligible for three weeks of paid vacation. All others are temporarily discharged, becoming eligible for unemployment benefits.

In December 2015, after about four years' employment, Hines requested a pay raise. Vulcan declined. Shortly after, Hines filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) claiming "national origin" and "compensation" discrimination. (App. at 301, 771, 783.) Around the same time, Vulcan began its annual winter shutdown. Following existing policy, Vulcan temporarily laid off several employees, including Hines. Hines applied for unemployment benefits and received "close" to what he actually earned while working for Vulcan. (App. at 403.)

In January, after the shutdown, Hines returned to work, and it is undisputed that his performance declined. Once, he produced twelve machine components in eight hours rather than the usual eighty. On another occasion, he produced four machine components over three hours instead of his normal thirty. Candidly, Hines admitted that he "might have been a little disgruntled," and his performance continued to decline. (App. at 449.) For example, other employees complained that Hines began making disruptive singing or yelling noises. Vulcan Vice President Richard Heldmann approached Hines about his conduct, and Hines

noted that he could earn just as much on unemployment.[1] The company concluded it could not "keep somebody [employed] who doesn't want to work," and terminated Hines citing his "declining work productivity," his "disruption to the shop floor," and his "seeming lack of desire to work for the Company." (App. at 308, 560.)

Hines then sued Vulcan alleging race-based discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, the New Jersey Law Against Discrimination (NJLAD), N.J. Stat. Ann. § 10:5-1 *et seq.*, and 42 U.S.C. § 1981; and violation of the Equal Protection Clause of the Fourteenth Amendment.[2] Vulcan moved for summary judgment, and the District Court held: 1) Hines failed to exhaust his administrative remedies, as his claims at the District Court were for race discrimination, while his prior EEOC charge was for national origin discrimination; and 2) even if Hines had exhausted his remedies, "there [wa]s no evidence besides [Hines's] own testimony which could support a finding that [Hines's] termination was motivated by racial discrimination." (App. at 7, 11.) For those reasons, the District Court granted Vulcan's motion for summary judgment. Hines timely appealed, and we will affirm.[3]

[1] Hines testified that at some point he may have made such a statement but that he did not make this statement directly to Richard Heldmann. (App. at 878.)

[2] Hines voluntarily dismissed his Equal Protection Clause claim because Vulcan is not a state actor.

[3] The District Court had jurisdiction over the Title VII and § 1981 claims under 28 U.S.C. § 1331 and supplemental jurisdiction over the NJLAD claim under 28 U.S.C. § 1367. We have jurisdiction under 28 U.S.C. § 1291.

II. ANALYSIS

We review the District Court's order granting summary judgment de novo. *Lehman Bros. Holdings, Inc. v. Gateway Funding Diversified Mortg. Servs., L.P.*, 785 F.3d 96, 100 (3d Cir. 2015). Summary judgment is appropriate where, viewing the evidence in the light most favorable to Hines, "no genuine dispute exists as to any material fact, and the moving party [Vulcan] is entitled to judgment as a matter of law." *Montone v. City of Jersey City*, 709 F.3d 181, 189 (3d Cir. 2013); *see Anderson v. Consol. Rail Corp.*, 297 F.3d 242, 247 (3d Cir. 2002).

A. Hines Did Not Exhaust His Administrative Remedies

The District Court held that Hines did not exhaust his administrative remedies before bringing a claim for judicial relief. *See Mandel v. M & Q Packaging Corp.*, 706 F.3d 157, 163 (3d Cir. 2013). We agree.

To bring a Title VII claim in federal court, "a plaintiff must first file a charge with the EEOC." *Webb v. City of Philadelphia*, 562 F.3d 256, 262 (3d Cir. 2009). Then, after obtaining a notice of the right to sue from the EEOC, a suit is proper if it "fall[s] fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom." *Mandel*, 706 F.3d at 163 (internal quotation marks omitted); *see also Anjelino v. N.Y. Times Co.*, 200 F.3d 73, 95 (3d Cir. 1999) (applying same standard to NJLAD). If not, the claim is barred. *See Webb*, 562 F.3d at 263. Here, the District Court correctly concluded that Hines's claims for race discrimination did "not sufficiently relate back" to his EEOC charge for national origin discrimination. (App. at 7.)

Hines does not dispute that he never raised a claim of racial discrimination with the EEOC. Rather, he argues that his failure to "check the right box" should be excused. We have stated that the relation back requirement should be interpreted to allow a cause of action to proceed when the plaintiff has substantially satisfied the administrative process. *See Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394 (3d Cir. 1976). So, for example, in *Ostapowicz*, we exercised jurisdiction over three claims filed "during the pendency of the administrative proceedings" that were "explanations of the original charge and growing out of it," despite the agency's consideration of only one charge. *Id.* at 399. In other words, there was no expansion of the cause of action to include claims never presented to the EEOC and thus no attempt to use the federal courts as "an administrative bypass." *Webb*, 562 F.3d at 263. Here, in contrast, Hines never raised any claim of alleged racial discrimination in his administrative filing. Nor did he ever supplement his EEOC charge with an amendment adding a claim based on race. *Cf. Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 462 (5th Cir. 1970) (describing plaintiff's mistake of checking the wrong box in her EEOC charge as a mere "technical defect" given the filing of an amendment). Hines has simply not raised his claim of racial discrimination with the EEOC, making his complaint untenable.

B. Hines Did Not Show Discrimination

But we also agree with the District Court that had Hines exhausted his administrative remedies, his race-based discrimination claims would fail. The District Court correctly applied the burden-shifting framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) to Hines's discrimination claims

brought under Title VII, § 1981, and NJLAD. *Anderson v. Wachovia Mortg. Corp.*, 621 F.3d 261, 267–68 (3d Cir. 2010); *Lawrence v. Nat'l Westminster Bank N.J.*, 98 F.3d 61, 70 (3d Cir. 1996). Under that test, the plaintiff must first establish a *prima facie* case of unlawful discrimination. *Sarullo v. U.S. Postal Serv.*, 352 F.3d 789, 797 (3d Cir. 2003) (per curiam). Then, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason" for the plaintiff's termination. *McDonnell Douglas*, 411 U.S. at 802. If the defendant produces a response, the burden shifts back to the plaintiff to show that the defendant's answer is merely a pretext for discrimination. *Id.* at 804–05. To survive summary judgment at the third step, the plaintiff must produce evidence that "allow[s] a factfinder reasonably to infer that each of the employer's proffered non-discriminatory reasons [were] either . . . post hoc fabrication[s] or otherwise did not actually motivate the employment action." *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994) (emphasis and citation omitted).

It is at step three that Hines's claims falter. Hines pleaded claims for race-based discrimination. Vulcan then proffered legitimate business reasons for Hines's layoff in December 2015 and termination in January 2016. Under policies applied to multiple employees, Vulcan temporarily discharged Hines during the winter shutdown. After he returned to work, Vulcan terminated him based on "the totality of the circumstances," including "declining work productivity," his "disruption to the shop floor," and his "seeming lack of desire to work for the Company." (App. at 308.) That required Hines to offer sufficient evidence for a factfinder to reasonably conclude that Vulcan's proffered reasons were pretextual. But he did not, even conceding that he "might have been a little

disgruntled," and that he might have said he would make more money on unemployment. (App. at 449, 878.) As the third step of the *McDonnell Douglas* framework is not met, summary judgment for Vulcan was appropriate.

III. CONCLUSION

For all these reasons, the District Court did not err in granting Vulcan's motion for summary judgment, and we will affirm.